IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs October 24, 2006

JOSEPH FRANKLIN CLARK v. STATE OF TENNESSEE

Appeal from the Criminal Court for Hamilton County
No. 253956 Rebecca J. Stern, Judge

No. E2006-01171-CCA-R3-PC - Filed December 28, 2006

The Petitioner, Joseph Franklin Clark, pled guilty to numerous felony and misdemeanor charges of theft, burglary, and possession of drug paraphernalia. The Petitioner filed a timely petition for post-conviction relief, which was later amended by counsel. The trial court orally denied the petition. The Petitioner argues that his plea was not knowingly and voluntarily entered and that he received the ineffective assistance of counsel. We conclude that the trial court did not enter an order or written memorandum containing adequate findings of fact and conclusions of law. We further conclude that the trial court's oral statements on the record were insufficient to deem the error harmless. Therefore, we remand for the entry of a proper order or written memorandum as required by the Post-Conviction Procedure Act.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed; Remanded

DAVID H. WELLES, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JOHN EVERETT WILLIAMS, J., joined.

Ruth H. Delange, Chattanooga, Tennessee, for the appellant, Joseph Franklin Clark.

Robert E. Cooper, Jr., Attorney General and Reporter; Blind Akrawi, Assistant Attorney General; Bill Cox, District Attorney General; and Bates Bryan, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

This proceeding arises from the Petitioner's guilty plea to several felony and misdemeanor charges of theft, burglary, and possession of drug paraphernalia.[1] Although the record provides only slight information of the underlying facts of these offenses, we are able to glean from the Petitioner's post-conviction testimony that he was reported to the Hamilton County Police Department for attempting to steal a car. Apparently the Petitioner was attempting to "hitch" another vehicle to his vehicle. When the officer arrived and searched the Petitioner's vehicle, the officer discovered stolen items. The prosecutor stated at the post-conviction hearing that these items were found "in the bed and the cab" of the Petitioner's vehicle. The prosecutor also stated that the items included "seven cell phones," "[t]ools, sports equipment," and "248 CD's" that had all been reportedly stolen. The prosecutor also stated that officers found "wires that apparently had been used to break into [a] car" in the Petitioner's vehicle. The Petitioner testified that he did not recall the details of the arrest but claimed that he had simply purchased all of these items from "an individual."

After entering a guilty plea to the various charges, the Petitioner was sentenced according to his plea agreement as a Range I, standard offender[2] to four consecutive two-year sentences to be served in community corrections. The Petitioner eventually violated his community corrections house-arrest program by removing the leg-band device and leaving the house-arrest residence. The Petitioner conceded that he committed this violation after discussing his right to a hearing with his attorney. The Petitioner was then ordered to serve the sentences in the Department of Correction. Following his incarceration, the Petitioner filed a petition for post-conviction relief, which was later amended by counsel, alleging that his plea was not knowingly and voluntarily entered and that he received the ineffective assistance of counsel.

At the post-conviction hearing, the Petitioner testified that he did not have his glasses when his attorney asked him to review his plea agreement. The Petitioner testified that he believed that he was going to receive a sentence of only six years for pleading guilty to the charges. Concerning the community corrections violation, the Petitioner said that his attorney advised him to "just go along and you'll get out of [jail] quicker."

The Petitioner testified that he told his attorney that the arrest resulting in the charges for all of these offenses involved an "illegal search." The Petitioner testified that he did not consent to a search of his vehicle when he was stopped. The Petitioner testified that, when he refused to allow

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[1] The Petitioner pled guilty to the following enumerated offenses: Case Number 248904–burglary of an automobile, a Class E felony, and theft, a Class A misdemeanor; Case Number 248906–attempted theft of property, a Class E felony; Case Number 248907–theft, a Class E felony; Case Number 249132–theft, a Class D felony; Case Number 249133–theft, a Class A misdemeanor, and possession of drug paraphernalia, a Class A misdemeanor; Case 249382–burglary of an automobile, a Class E felony, and theft, a Class A misdemeanor.

[2] The Petitioner was eligible to be sentenced as a Range II offender, but he pled guilty under an agreement to be sentenced as a Range I offender.

the officers to search his car, the officers told him that they would put him "in the back of the car" and that he needed to "shut up or [the officer would] break [his] arm." The Petitioner testified that his attorney told him that "he didn't think he could do nothing (sic) with that."

The Petitioner's trial attorney testified that another of his colleagues at the public defender's office conducted the preliminary hearing in the Petitioner's case. The attorney did not recall whether he had listened to this tape, but the public defender's office did have a copy of the tape.

The Petitioner's attorney testified that he had received discovery on all of the Petitioner's cases but that he did not have a record of when it was received. He stated that he had filed discovery motions on all of the Petitioner's cases. The attorney stated that his file included all of the completed discovery information.

The Petitioner's attorney testified that he did not file a motion to suppress in this matter but did not recall specifically why he chose not to do so. The attorney testified that he either "didn't see anything that presented a suppressible issue" or that the Petitioner wanted him to "just get an offer that got him out of jail." The attorney did recall that "the whole direction [that his] representation [of the Petitioner] went in was to get an offer that got him out of jail."

The Petitioner's attorney testified that the Petitioner violated his community corrections program because he "left his home and cut off the band." The attorney testified that he "told him that he could either have a hearing and to let the Court determine if he had violated the conditions of [c]ommunity [c]orrections or if he didn't want to have a hearing he could concede that he did in fact violate [the [c]ommunity [c]orrections requirements]. . . . [H]e chose that he wanted to concede the violation and did not want to contest it." The attorney stated that a letter from the community corrections program that was filed with the court incorrectly stated that the Petitioner would be required to serve six years after the violation; however, the attorney said he believed that he advised the Petitioner that he would actually serve eight years because he "probably went over [the sentence by referring to] the plea papers."

At the conclusion of the post-conviction hearing, the trial judge stated as follows: "I find that he had effective assistance of counsel. That this was actually a knowing and voluntary plea that he entered into and all of these things were probably done at the time in his best interest. The post-conviction petition is dismissed." The trial judge made no other factual findings or legal conclusions regarding the disposition of the Petitioner's case. Furthermore, the record does not contain an order or written memorandum disposing of the petition.

Analysis

A trial court's final disposition of a petition for post-conviction relief "shall set forth in the order or a written memorandum of the case all grounds presented, and shall state the findings of fact and conclusions of law with regard to each such ground." Tenn. Code Ann. § 40-30-111(b). "This Court has construed the statute to mean that findings of fact are mandatory." Donald Mays v. State, No. W2003-02761-CCA-R3-PC, 2004 WL 2439255, at *6 (Tenn. Crim. App., Jackson, Oct. 28,

2004). If the trial court fails to provide written findings and conclusions, the error may be deemed harmless if the trial court includes adequate oral findings on the record. State v. Higgins, 729 S.W.2d 288, 290-91 (Tenn. Crim. App. 1987); State v. Swanson, 680 S.W.2d 487, 489 (Tenn. Crim. App. 1984); see also Tenn. R. App. P. 36(b); Tenn. R. Crim. P. 52(a). The order granting or denying relief under the provisions of the Act shall be deemed a final judgment. Tenn. Code Ann. § 40-30-116.

In this case, the record does not contain a written order or memorandum which includes findings of fact and conclusions of law as required by the Post-Conviction Procedure Act. The trial court also failed to make any oral findings of fact. Findings of fact and conclusions of law are necessary for adequate and effective appellate review of the Petitioner's claims. See Larry A. Wade v. State, No. 01C01-9809-CR-00378, 1999 WL 994051 (Tenn. Crim. App., Nashville, Nov. 4, 1999). Therefore, we remand this case to permit the trial court to enter an order or written memorandum addressing all grounds presented, with findings of fact and conclusions of law as required by the Post-Conviction Procedure Act. See Tenn. Code Ann. § 40-30-111(b). Once the trial court enters its order, the Petitioner may again appeal as of right, if he so desires.

Conclusion

Based upon the foregoing reasoning and authorities, the action of the trial court dismissing the petition is reversed. We remand this case to the trial court to revisit the grounds raised by the Petitioner in the original and amended petitions and, thereafter, enter findings of fact and conclusions of law as required by the Post-Conviction Procedure Act.

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DAVID H. WELLES, JUDGE